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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,050	12/30/2003	Pol O. Morain	D/A1633 (1508/3671)	6786

7590 03/31/2008

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EXAMINER	
AL HASHEMI, SANA A	

ART UNIT	PAPER NUMBER
2164	

MAIL DATE	DELIVERY MODE
03/31/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/748,050	MORAIN ET AL.	
	Examiner	Art Unit	
	Sana Al-Hashemi	2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 December 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is issued in response to amendment filed 12/21/07.

Response to Amendment

Claims 1-28 were amended. No claims were added. No claims were canceled.

Specification

Claims 1-28 are objected to because of the following informalities: The period "." In the middle of the limitations should be changed to "," or ";". Appropriate correction is required.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-19 and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (U.S. Patent 6,466,915) in view of Reiner et al. (U.S. Patent 7,165,105.

Claim 1: FIG. 1 of Suzuki illustrates a first device in the form of a terminal (200).

The terminal is a computer terminal and thus inherently includes a digital content storage system in the form of internal memory.

The graphical User interface of FIG. 25 of Suzuki is a monitoring system that appears on the terminal and monitors the selection of specific files, such as the selection of "flower-pattern one piece dress. Making selections generates usage data, such a color size price and quantity purchased, which are subsequently sent to the central processing center (100) in FIG. 1.

The data fields, such as the data fields containing the named color "pink" and the price "6.800" are the usage data storage system since these fields store usage data until it is sent to the central processing center (100) in FIG. 1.

FIG. 11 illustrates a table which forms the usage metrics system. The table permits inferred conclusions, such as the conclusion that a customer prefers a specific size, as illustrated at C in FIG. 7C and described at col. 18, lines 1-6. The table of FIG. 11 is located in the order reception file (3) (col. 13, liens 66-67) which is part of the central processing center (100) and forms a second device remote from the first device (terminal 200).

Suzuki differs, in that it does nor disclose usage events that include play event types describing how the content is consumed and a time stamp indicating when the event occurred.

However, Reiner at FIG. 3B discloses an interface which can create data model which records a play event type (viewing web pages) that describes how digital content is consumed the play type includes at least one of play, pause, and stop, (number of pages viewed during a visit and number of visits during a time period), and a time stamp indicating when the event occurred (the time period of visits from starting date to ending date).

Accordingly, it would have been obvious to one of ordinary skill in the art to modify Suzuki to

further include a data model which records additional usage events in the form of a play event type (viewing of web pages) which describes how the content is used and timestamps indicating the period of use. Such modification would have been motivated by the advantage of gauging web marketing performance for e-business decisions, as specified at col. 1, lines 20-30 of Reiner.

Claim 2: The data of FIG. 11 is organized into a plurality of categories, including genre type (good information--102).

Claim 3: The first device (electronic terminal) obtains its digital content from the merchant providing the goods.

Claim 4: Col. 17, lines 40-53, and in particular, lines 40-44 outline a digital content recommendation system based on the information in the usage metrics. The customer may be recommended specific merchandise via digital advertisement ('goods introduction") to the customer on the basis of past purchases.

Claim 5: The merchant uses the metrics system to select products to recommend to the consumer via digital advertisement ('goods introduction").

Claim 6: The merchant providing the content is a marketing company.

Claim 7: The selections which are made available to the customer are presented as digital documents (FIG. 21, 22A-22C and 23). Claim 8: See remarks for claim 1. Claim 9: See remarks for claim 2. Claim 10: See remarks for claim 3. Claim 11: See remarks for claim 4. Claim 12: See remarks for claim 5. Claim 13: See remarks for claim 6. Claim 14: See remarks for claim 1. Claim 15: See remarks for claim 2. Claim 16: See remarks for claim 3. Claim 17: See remarks for claim 4. Claim 18: See remarks for claim 5. Claim 19: See remarks for claim 6.

Claim 23: As seen in FIG. 25 of Suzuki, the resulting input data can include a preference for a

color of an article or a size of an article.

Claim 24: As seen in FIG. 25 of Suzuki, the resulting input data can indicate the consuming habits of a consumer, such as purchasing dresses.

Claim 26: See remarks for claim 24. Claim 27: See remarks for claim 23. Claim 28: See remarks for claim 24.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki et al. (U.S. Patent 6,466,915) in view of Reiner et al. (U.S. Patent 7,165,105) and further in view of Henrick (U.S. Patent 6,507,727).

Claim 20-22: FIGS. 5A-5C of Henrick illustrate a portable device which can download digital audio content, such as a song file ("download song"). The portable device is thus a digital audio player. The digital content can be purchased (abstract, line 1).

It would have been obvious to one of ordinary skill in the art to modify the terminal (200) of Suzuki et al. to be a portable cellular terminal configured to additionally download audio content as taught by Henrick so a to permit portability of the terminal and permit both physical items (clothing) and digital content (songs) to be purchased from the same system.

Response to Arguments

Applicant argues that the applied art(s) fails to discloses the newly amended limitation "the play event type includes at least one of play, pause, and stop".

Examiner disagrees. Since the claims call for at least one of play pause, and stop, and the applied art(s) discloses the play thus the limitation has been met. Furthermore, it is a well settled rule that a reference must be considered not only for what it expressly teaches but also for what it

fairly suggests. See *In re Burckel*, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979) and *In re Lamberti*, 545 F.2d 747, 192 USPQ 278 (CCPA 1976) as well as *In re Bode*, 550 F.2d 656, 193 USPQ 12 (CCPA 1977) which indicates such fair suggestions to unpreferred embodiments must be considered even if they were not illustrated. Additionally, it is an equally well settled rule that what a reference can be said to fairly suggest relates to the concepts fairly contained therein, and is not limited by the specific structure chosen to illustrate such concepts. *See In re Bascom*, 230 F.2d 612, 109 USPQ 98 (CCPA 1956).

Applicant argues the Suzuki does not discloses "usage event that includes play event types …".

Applicant disagrees. Since the argued limitations were rejected under 103 the attorney cannot show non-obviousness by attacking references by attacking references individually where, as here the rejection is based on combination of references. In re Keller, 208 USPQ 871 (CCPA 1981).

Applicant argues the Reiner does not discloses "usage event that includes play event types …".

Applicant disagrees. Since the argued limitations were rejected under 103 the attorney cannot show non-obviousness by attacking references by attacking references individually where, as here the rejection is based on combination of references. In re Keller, 208 USPQ 871 (CCPA 1981).

Applicant argues the Henrick does not discloses "usage event that includes play event types …".

Applicant disagrees. Since the argued limitations were rejected under 103 the attorney cannot show non-obviousness by attacking references by attacking references individually where, as here the rejection is based on combination of references. In re Keller, 208 USPQ 871 (CCPA 1981).

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Point of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sana Al-Hashemi whose telephone number is 571-272-4013. The examiner can normally be reached on 8Am-4:30Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Rones can be reached on 571-272-4085. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sana Al-Hashemi/
Primary Examiner, Art Unit 2164
March 26, 2008